

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Case No.: 09-CV-06352 (DAB)

JOHN GILBERT,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	JURY TRIAL
ROBERT INDIANA,	:	DEMANDED
	:	
Defendant.	:	

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**PLAINTIFF'S RESPONSE TO AMENDED ANSWER AND COUNTERCLAIMS**

Plaintiff John Gilbert ("Plaintiff" or "Gilbert"), by his undersigned attorneys alleges, upon knowledge as to its own conduct and otherwise upon information and belief, replies to Defendant Robert Indiana's ("Defendant" or "Indiana") Amended Answer and Counterclaims as follows:

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff denies Defendant's first affirmative defense.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff denies Defendant's second affirmative defense.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff denies Defendant's third affirmative defense.

**COUNTERCLAIMS**

**Counterclaim Parties**

1. Plaintiff admits the allegations contained in paragraph 1 of the Counterclaims.

2. Plaintiff denies the allegations contained in paragraph 2 of the Counterclaims.

**Jurisdiction and Venue**

3. Paragraphs 3-5 assert conclusions of law to which no responsive pleading is required, and to the extent any responsive pleading is required deny statements made in paragraphs 3-5.

**Factual Allegations**

4. Plaintiff admits the allegations contained in paragraph 6 of the Counterclaims.
5. Plaintiff admits the allegations contained in paragraph 7 of the Counterclaims.
6. Plaintiff denies the allegations contained in paragraph 8 of the Counterclaims.
7. Plaintiff admits the allegations contained in paragraph 9 of the Counterclaims.
8. Plaintiff denies the allegations contained in paragraph 10 of the Counterclaims.
9. Plaintiff denies the allegations contained in paragraph 11 of the Counterclaims.
10. Plaintiff denies the allegations contained in paragraph 12 of Counterclaims.
11. Plaintiff admits that he brought "English Prem" tapestries and sculptures to Defendant's studio in Vinalhaven, Maine, and took photographs of Defendant with those works but otherwise denies the allegations contained in paragraph 13 of the Counterclaims.
12. Plaintiff admits the allegations contained in paragraph 14 of the Counterclaims.
13. Plaintiff admits the allegations contained in paragraph 15 of the Counterclaims.
14. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Counterclaims.

**COUNTERCLAIM COUNT I**

15. To the extent paragraph 17 of the Counterclaims repeats and realleges the allegations contained in paragraphs 1 to 16 of the Counterclaims, Plaintiff repeats and realleges his prior responses thereto.

16. Plaintiff denies the allegations contained in paragraph 18 of the Counterclaims.
17. Plaintiff denies the allegations contained in paragraph 19 of the Counterclaims.
18. Plaintiff denies the allegations contained in paragraph 20 of the Counterclaims.
19. Plaintiff denies the allegations contained in paragraph 21 of the Counterclaims.
20. Plaintiff denies the allegations contained in paragraph 22 of the Counterclaims.
21. Plaintiff denies the allegations contained in paragraph 23 of the Counterclaims.
22. Plaintiff denies the allegations contained in paragraph 24 of the Counterclaims.
23. Plaintiff denies the allegations contained in paragraph 25 of the Counterclaims.
24. Plaintiff denies the allegations contained in paragraph 26 of the Counterclaims.

#### **COUNTERCLAIM COUNT II**

25. To the extent paragraph 27 of the Counterclaims repeats and realleges the allegations contained in paragraphs 1 to 16 of the Counterclaims, Plaintiff repeats and realleges his prior responses thereto.

26. Plaintiff denies the allegations contained in paragraph 28 of the Counterclaims.
27. Plaintiff denies the allegations contained in paragraph 29 of the Counterclaims.
28. Plaintiff denies the allegations contained in paragraph 30 of the Counterclaims.
29. Plaintiff denies the allegations contained in paragraph 31 of the Counterclaims.
30. Paragraphs 32-36 assert conclusions of law to which no responsive pleading is required, and to the extent any responsive pleading is required deny statements made in paragraphs 32-36.

#### **COUNTERCLAIM COUNT III [labeled at IV]**

31. To the extent paragraph 37 of the Counterclaims repeats and realleges the allegations contained in paragraphs 1 to 16 of the Counterclaims, Plaintiff repeats and realleges his prior responses thereto.

32. Plaintiff denies the allegations contained in paragraph 38 of the Counterclaims.
33. Plaintiff denies the allegations contained in paragraph 39 of the Counterclaims.
34. Plaintiff denies the allegations contained in paragraph 40 of the Counterclaims.
35. Plaintiff denies the allegations contained in paragraph 41 of the Counterclaims.
36. Plaintiff denies the allegations contained in paragraph 42 of the Counterclaims.
37. Plaintiff denies the allegations contained in paragraph 43 of the Counterclaims.
38. Plaintiff denies the allegations contained in paragraph 44 of the Counterclaims.

As to Defendant's WHEREFORE clause, Plaintiff denies that Defendant is entitled to any of the relief requested in paragraphs a-d.

### **GENERAL DENIAL**

Plaintiff generally denies each and every remaining allegation contained in Defendant's Amended Answer and Counterclaims which have not been previously admitted, denied, or answered. Plaintiff specifically denies that Defendant is entitled to any of the requested relief.

### **DEFENSES**

#### **First Affirmative Defense**

Defendant's Counterclaims, on one or more counts set forth therein, fail to state a claim on which relief can be granted.

#### **Second Affirmative Defense**

Defendant's equitable claims are barred, in whole or in part, by reason of unclean hands.

#### **Third Affirmative Defense**

Defendant's Counterclaims are barred, in whole or in part, by laches.

**Fourth Affirmative Defense**

Defendant's Counterclaims are barred, in whole or in part, by the doctrines of waiver, acquiescence and estoppel.

**RESERVATION OF RIGHTS**

Plaintiff hereby reserves the right to assert additional affirmative defenses if such defenses are discovered during the course of this litigation.

Date: November 18, 2009

Respectfully submitted,



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